

(1) Lease from The Tower Building Company for rooms 621, 623, 625, 627, 629 and 631 in the Nasby building, Toledo, Ohio. This lease is for a term of eighteen (18 months), beginning on the first day of July, 1927, and ending on the first day of January, 1929, by the terms of which the state will be required to pay one hundred and twenty-five (\$125.00) dollars per month on the first day of each and every month in advance.

(2) Lease from The Union Land and Building Company, of Youngstown, Ohio, for rooms, 403, 404 and 405 in the Realty Building, Youngstown, Ohio. This lease is for a term of eighteen (18) months, beginning on the first day of July, 1927, and ending on the 31st day of December, 1928, by the terms of which the state will be required to pay the sum of one hundred and sixty-five (\$165.00) dollars per month on the first day of each and every month in advance.

You have submitted encumbrance estimates which contain the certificate of the Director of Finance to the effect that funds are available for the payment of said rentals. In each instance proper evidence of corporate authority has been furnished, indicating the right of the officers executing said leases to execute them.

Finding said leases in proper legal form, I hereby approve them as to form and return them herewith.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

955.

LEASES—CANAL LANDS—DUTY OF APPRAISER TO APPRAISE EXISTING LEASEHOLDS AT THEIR TRUE VALUE IN MONEY FOR ANY PURPOSE FOR WHICH LANDS CAN BE USED—HOUSE BILL NO. 162, 87TH GENERAL ASSEMBLY, DISCUSSED.

*SYLLABUS:*

1. *It is the duty of the appraisers provided for in House Bill No. 162, passed by the 86th General Assembly (111 Ohio Laws, page 208), to appraise existing leaseholds at their true value in money for any purpose for which the land can be used, as provided in sections seven and ten of said act.*

2. *Any leases given upon said property after said appraisalment should be based upon the value so fixed.*

COLUMBUS, OHIO, September 7, 1927.

HON. GEORGE F. SCHLESINGER, *Director of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—Permit me to acknowledge your letter requesting my opinion as follows:

"In making appraisements for the renewal of existing leases in the city of Dayton, we have problems something like the following:

On September 3, 1925, the state leased to The Indiana, Columbus and Eastern Traction Company, a right-of-way for a single track on the berme side of the Miami and Erie canal between Second and Third streets in the city of Dayton, at a valuation of sixteen thousand six hundred sixty-six dollars and sixty-seven cents (\$16,666.67), which was at the time, and is yet, a fair appraisalment of the valuation of the ground included in the lease.

The Act of Abandonment, as found in O. L. 111, page 208, provides for the relinquishment to the state of existing leases, and this lease was a renewal of a former lease at the same appraisal. As soon as the act became effective, the traction company applied for a renewal of its lease for the term of ninety-nine (99) years, renewable forever, as provided for by the terms of the act.

The question which we desire you to determine is as to how this should be appraised.

It is our opinion that the lease should be assigned, at the appraised value as stated in the lease, to the city of Dayton. There are a large number of similar leases which have not yet been appraised, but the rentals stated in the existing leases, and many of the tracts, have appreciated very much in value.

In many of these proposed leases, the state and the proposed lessee are in accord as to the appraisal, but the city of Dayton seeks to have these appraisements reduced below the appraisements given in the existing leases, while there is no question in our minds, but what the lands are much more valuable than the valuations given in the existing leases.

It is our opinion that these should be appraised at their true value in money, for any purpose for which they can be used, as for instance, railway rights-of-way are often worth three or four times what tracts in allotments would be worth, and since we are able to agree with the proposed lessees, there does not seem to be any reason in our minds for reducing the valuations.

We will greatly appreciate your early opinion upon the matter herein submitted."

Your inquiry requires consideration of House Bill No. 162 passed by the 86th General Assembly, 111 Ohio Laws, page 208. This act was considered and discussed at length in a former opinion of this department, viz., Opinion No. 784, issued on July 27, 1927, which opinion may be considered to a certain extent in connection with the question herein presented.

Section 7 of the act reads as follows :

"As soon as convenient after the filing of said application, the governor shall appoint a board of appraisers, consisting of either three or five members, as he may deem best, one of whom shall be either the superintendent, or assistant superintendent of public works, and the board of appraisers thus appointed shall proceed, within thirty days after such appointment, to appraise the portions of said abandoned canal lands applied for by municipalities or other subdivisions of the state, that will not be required for the purposes of any proposed ship or barge canal, as provided in section one hereof, together with all feeders, basins, wide waters and state lots heretofore used in connection with said canal property within such municipalities, and likewise all the existing leases upon said canal and feeder lands, basins, wide waters and state lots, within the limits of the applications as applied for by municipalities or other legal subdivisions of the state, at their true value in money, and shall file in writing certified copies of such appraisal with the governor and superintendent of public works of Ohio, and likewise with the mayor or city manager of the municipality making such applications."

It will be noted that said section requires the valuations therein mentioned to be made at their "true value in money." This appraisal is for the purpose of determining the rental to be paid by the municipality which wishes to lease any of said property.

Section 9 of the act permits any company which owns,

"an existing leasehold for canal lands, which prior to January 1, 1925, has been improved by the construction of a railway track thereon or by the erection of substantial buildings thereon, other than buildings erected for the use of gasoline and oil filling stations, may file an application within one year from the date from which this act becomes effective with the superintendent of public works for permission to surrender his present leasehold and take a new lease thereon under the terms of this act, \* \* \*. The annual rentals for such new leases shall be at the rate of six per cent annually, and when such lease has been renewed, it may be assigned by said superintendent of public works to the municipality making the application to lease the canal lands within its corporate limits."

Section 10 of the act reads as follows:

"If any portion of the said abandoned canal property covered by such application has already been leased by the superintendent of public works, or his predecessors in office, under the provisions of statutes heretofore enacted, the superintendent of public works may, subject to the approval of the governor and attorney general, transfer and assign such lease or leases to the city, village, or other political subdivision making such application, subject, however, to all the rights of existing lessees of the state of Ohio for lands only. *Such existing lease or leases shall be appraised at their true value in money for any purpose for which the land herein described can be used, in the same manner as prescribed in section seven hereof.* After such existing lease or leases have been transferred and assigned to said applicant, the city, village or other political subdivision to which such transfer and assignment has been made, shall thereafter be entitled to all the revenues accruing from the same, and from the renewals thereof, and shall pay to the state of Ohio rentals at the rate of 4 per cent as hereinafter provided in section eleven."

It seems that the intent of the legislature as expressed in sections 7 and 10 of the act under consideration was, that when a portion of the canal property was encumbered by an existing lease, such property should be appraised at its "true value in money for any purpose for which the land therein described" could be used; and such value must be taken as the basis of all subsequent leases. If it is leased to the municipality as provided in the act subject to such lease, the municipality should pay a rental of four per cent upon such valuation.

If the lease was renewed as provided by section 9 of the act, the rental of six per cent must be based upon such valuation. Such lease could thereafter be assigned to the municipality. Such assignment would permit the subdivision to receive from the lessee the six per cent upon that valuation and would be required to account to the state only at the rate of four per cent based on said valuation.

It is, therefore, my opinion that:

(1) It is the duty of the appraisers provided for in House Bill No. 162, passed by the 86th General Assembly (111 Ohio Laws, page 208), to appraise existing leaseholds at their true value in money for any purpose for which the land can be used, as provided in Sections 7 and 10 of the act.

(2) Any leases given upon said property after said appraisement should be based upon the value so fixed.

Respectfully,

EDWARD C. TURNER,

Attorney General.